



February 13, 2004

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## ENGROSSED SENATE BILL No. 233

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DIGEST OF SB 233 (Updated February 11, 2004 1:50 pm - DI 107)

**Citations Affected:** IC 35-42; IC 35-50.

**Synopsis:** Probation and court employees. Allows a court to order restitution payments that are a condition of probation to be paid to a probation department that must forward the restitution payments to a victim, victim's family, or victim's estate. Provides that for purposes of the battery by bodily waste statute, an individual employed by certain courts is a "corrections officer."

**Effective:** July 1, 2004.

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### Bray, Zakas

(HOUSE SPONSORS — FOLEY, THOMAS, KUZMAN)

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January 8, 2004, read first time and referred to Committee on Judiciary.  
January 15, 2004, reported favorably — Do Pass.  
January 20, 2004, read second time, ordered engrossed.  
January 21, 2004, engrossed.  
January 22, 2004, read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Judiciary.  
February 12, 2004, amended, reported — Do Pass.

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ES 233—LS 6758/DI 107+



February 13, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 233

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-42-2-6, AS AMENDED BY P.L.88-2002,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2004]: Sec. 6. (a) As used in this section, "corrections officer"  
4 includes a person employed by:

- 5 (1) the department of correction;
- 6 (2) a law enforcement agency; ~~or~~
- 7 (3) a county jail; **or**

8 **(4) a circuit, superior, county, probate, city, or town court.**

9 (b) As used in this section, "human immunodeficiency virus (HIV)"  
10 includes acquired immune deficiency syndrome (AIDS) and AIDS  
11 related complex.

12 (c) A person who knowingly or intentionally in a rude, insolent, or  
13 angry manner places blood or another body fluid or waste on a law  
14 enforcement officer or a corrections officer identified as such and while  
15 engaged in the performance of official duties or coerces another person  
16 to place blood or another body fluid or waste on the law enforcement  
17 officer or corrections officer commits battery by body waste, a Class D

ES 233—LS 6758/DI 107+



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- 1 felony. However, the offense is:
- 2 (1) a Class C felony if the person knew or recklessly failed to
- 3 know that the blood, bodily fluid, or waste was infected with:
- 4 (A) hepatitis B;
- 5 (B) HIV; or
- 6 (C) tuberculosis;
- 7 (2) a Class B felony if:
- 8 (A) the person knew or recklessly failed to know that the
- 9 blood, bodily fluid, or waste was infected with hepatitis B and
- 10 the offense results in the transmission of hepatitis B to the
- 11 other person; or
- 12 (B) the person knew or recklessly failed to know that the
- 13 blood, bodily fluid, or waste was infected with tuberculosis
- 14 and the offense results in the transmission of tuberculosis to
- 15 the other person; and
- 16 (3) a Class A felony if:
- 17 (A) the person knew or recklessly failed to know that the
- 18 blood, bodily fluid, or waste was infected with HIV; and
- 19 (B) the offense results in the transmission of HIV to the other
- 20 person.
- 21 (d) A person who knowingly or intentionally in a rude, an insolent,
- 22 or an angry manner places human blood, semen, urine, or fecal waste
- 23 on another person commits battery by body waste, a Class A
- 24 misdemeanor. However, the offense is:
- 25 (1) a Class D felony if the person knew or recklessly failed to
- 26 know that the blood, semen, urine, or fecal waste was infected
- 27 with:
- 28 (A) hepatitis B;
- 29 (B) HIV; or
- 30 (C) tuberculosis;
- 31 (2) a Class C felony if:
- 32 (A) the person knew or recklessly failed to know that the
- 33 blood, semen, urine, or fecal waste was infected with hepatitis
- 34 B and the offense results in the transmission of hepatitis B to
- 35 the other person; or
- 36 (B) the person knew or recklessly failed to know that the
- 37 blood, semen, urine, or fecal waste was infected with
- 38 tuberculosis and the offense results in the transmission of
- 39 tuberculosis to the other person; and
- 40 (3) a Class B felony if:
- 41 (A) the person knew or recklessly failed to know that the
- 42 blood, semen, urine, or fecal waste was infected with HIV; and

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1 (B) the offense results in the transmission of HIV to the other  
2 person.

3 SECTION 2. IC 35-50-5-3, AS AMENDED BY P.L.88-2002,  
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2004]: Sec. 3. (a) Except as provided in subsection (i), in  
6 addition to any sentence imposed under this article for a felony or  
7 misdemeanor, the court may, as a condition of probation or without  
8 placing the person on probation, order the person to make restitution  
9 to the victim of the crime, the victim's estate, or the family of a victim  
10 who is deceased. The court shall base its restitution order upon a  
11 consideration of:

- 12 (1) property damages of the victim incurred as a result of the
- 13 crime, based on the actual cost of repair (or replacement if repair
- 14 is inappropriate);
- 15 (2) medical and hospital costs incurred by the victim (before the
- 16 date of sentencing) as a result of the crime;
- 17 (3) the cost of medical laboratory tests to determine if the crime
- 18 has caused the victim to contract a disease or other medical
- 19 condition;
- 20 (4) earnings lost by the victim (before the date of sentencing) as
- 21 a result of the crime including earnings lost while the victim was
- 22 hospitalized or participating in the investigation or trial of the
- 23 crime; and
- 24 (5) funeral, burial, or cremation costs incurred by the family or
- 25 estate of a homicide victim as a result of the crime.

26 (b) A restitution order under subsection (a) or (i) is a judgment lien  
27 that:

- 28 (1) attaches to the property of the person subject to the order;
- 29 (2) may be perfected;
- 30 (3) may be enforced to satisfy any payment that is delinquent
- 31 under the restitution order by the person in whose favor the order
- 32 is issued or the person's assignee; and
- 33 (4) expires;

34 in the same manner as a judgment lien created in a civil proceeding.

35 (c) When a restitution order is issued under subsection (a), the  
36 issuing court may order the person to pay the restitution, or part of the  
37 restitution, directly to:

- 38 (1) the victim services division of the Indiana criminal justice
- 39 institute in an amount not exceeding:
- 40 (1) (A) the amount of the award, if any, paid to the victim
- 41 under IC 5-2-6.1; and
- 42 (2) (B) the cost of the reimbursements, if any, for emergency

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services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

**(2) a probation department that shall forward restitution or part of restitution to:**

**(A) a victim of a crime;**

**(B) a victim's estate; or**

**(C) the family of a victim who is deceased.**

The victim services division of the Indiana criminal justice institute shall deposit the restitution ~~received~~ **it receives** under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a) or (i) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court

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1 shall base its restitution order upon a consideration of the amount of  
2 money that the convicted person converted, misappropriated, or  
3 received, or for which the convicted person conspired. The restitution  
4 order issued for a violation of IC 35-43-9 must comply with  
5 subsections (b), (d), (e), and (g), and is not discharged by the  
6 completion of any probationary period or other sentence imposed for  
7 a violation of IC 35-43-9.

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SENATE MOTION

Madam President: I move that Senator Zakas be added as second author of Senate Bill 233.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 233, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 233 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 233, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-42-2-6, AS AMENDED BY P.L.88-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

- (1) the department of correction;
- (2) a law enforcement agency; ~~or~~
- (3) a county jail; **or**

**(4) a circuit, superior, county, probate, city, or town court.**

(b) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

(c) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

- (1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

- (2) a Class B felony if:

- (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
- (B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

- (3) a Class A felony if:

- (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

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(B) the offense results in the transmission of HIV to the other person.

(d) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) a Class C felony if:

- (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
- (B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

- (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 233 as printed January 16, 2004.)

LAWSON L, Chair

Committee Vote: yeas 11, nays 0.

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